

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 07-602V
Filed: June 1, 2010

JAMES SMITH, *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Joint motion for ruling on the
record; Diphtheria-Tetanus-
acellular-Pertussis, DTaP; Arm
and neck pain; Muscle tightening;
Cervical disk (C6-7) bulge

DECISION¹

The Petition in this matter was filed on August 14, 2007. Petitioner sought compensation for injuries alleged to have occurred as a result of the tetanus component of a Diphtheria-Tetanus-acellular-Pertussis (DTAP) petitioner received on June 22, 2006. Petitioner alleged the vaccination caused escalating neck and arm pain. Petition at ¶¶ 4, 8. Petitioner alleges he also suffers from a cervical disk (C6-7) bulge due to muscle tightening cause by the tetanus component of the vaccine. Petition at ¶¶ 9, 14. Respondent filed the Rule 4(c) Report (R Report) on July 14, 2008, contesting compensation. The Rule 4(c) Report noted multiple missing records. Thereafter, petitioner sought outstanding medical records and an expert report. See, e.g., P Status Report, November 11, 2008; Notice, March 9, 2009. Medical records were filed between April 2009 and November 2009.

On January 1, 2010, petitioner filed an expert report from Dr. DeJesus. Dr. DeJesus opined that petitioner's injuries were "not possibly secondary to the tetanus toxoid vaccination on 6/22/06." P Expert Report at 4, filed January 1, 2010. The expert explained that the "tetanus vaccination can cause muscle pain," leading to further problems, "but this occurs at the injection site and not on the opposite extremity." Id. Petitioner's expert also stated there was no study supporting petitioner's theory. Id.

¹ The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

On March 23, 2010, petitioner filed a status report stating he “rests on the evidence already submitted to the Court” P Status Report, March 23, 2010. On April 27, 2010, the parties filed a Joint Motion for Ruling on the Current Record.

The Act at 42 U.S.C. § 300aa-13(a) provides that the special master “may not make a finding based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.” In this case, it is not contested that the medical records do not support petitioner's claim for compensation. It is also obvious from the written report that Dr. DeJesus, petitioner’s expert, does not support a claim for compensation. Thus, the Petition remains unsupported by either medical records or medical opinion and in accordance with section 13(a) the undersigned has no option but to **dismiss** this case for want of proof.

The Clerk shall enter judgment accordingly.²

IT IS SO ORDERED.

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Special Master

² This document constitutes a final “decision” in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision.